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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,609	01/17/2002	Brian Lauman	DI-5764 (112713-146)	1135

29200 7590 06/06/2005

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EXAMINER
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HAYES, MICHAEL J

ART UNIT	PAPER NUMBER
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3763

DATE MAILED: 06/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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## Office Action Summary

Application No.

10/051,609

Applicant(s)

LAUMAN ET AL.

Examiner

Michael J. Hayes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-55 is/are pending in the application.
- 4a) Of the above claim(s) 37-52 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36 and 53-55 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## **DETAILED ACTION**

### ***Election/Restrictions***

The finality of the restriction requirement made in paper mailed 12/7/04 is removed and claims 8-12, 14-17, and 23-26 are not withdrawn. Claims 37-52 remain withdrawn as drawn to a method of heating dialysis fluid.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 21 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 21 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: those elements that cause different fluid velocities. The recitation of different volumes does not cause different fluid velocities in itself and it appears that there are other essential elements not recited that cause the fluid velocities to be different.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 4, 7, 8-12, 13, 14-26, 27, 28, 29, 54, 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over JORDAN (US Patent No. 5,875,282) or PINS (US Patent No. 2,475,590) in view of KONISHI (US Publication No. 2002/0096984), GORDON (US Patent No. 6,261,261), or HICKERSON et al. (US Publication No. 2003/0004470). Jordan and Pins disclose multiple heaters. Replacing one of the heaters with another infrared emitter heater disclosed in the prior art would be obvious to one of ordinary skill in the art in order to make use of the known advantages of prior art heaters. The use of fine control over the heaters disclosed in Jordan to include power to one or both of the heaters would be obvious to one of ordinary skill in the art in order to vary heating from minimal to maximum available heating. Jordan suggests varying the heating from a minimum (i.e., one heater) to a maximum (i.e., both heaters). One of ordinary skill in the art would know to varying power to the heaters appropriately to obtain the desired heating.

Jordan and Pins discloses a fluid heater including a radiant heater, plate heater, and controller capable of heating 125 ml/min 5-37 degrees C or 2 liters 10-37 degrees C in 13 minutes.

Jordan or Pins disclose the claimed invention except for a reflector. Gordon teaches the use of a reflector to achieve efficient heating (2:45-49). It would have been obvious to one of ordinary skill in the art at the time of the invention to use the teachings of Gordon in the invention of Jordan or Pins to quickly heat fluid.

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Claims 1-3, 5-7, 13, 18, 19, 27-36, 53, are rejected under 35 U.S.C. 103(a) as being unpatentable over KAMIYAMA et al. (US Patent No. 5,271,086). Kamiyama discloses a fluid heater including a radiant infrared heater, secondary heater, controller, and temperature sensor connected to a pump. The device is capable of connecting to a catheter or tubing. Kamiyama discloses placing the heating elements in series to accomplish heating (5:18-40). It would have been obvious to one of ordinary skill in the art at the time of the invention to have the controllers for the various elements in series to be arranged to heat at the same time or at different times depending on the heating requirements of the fluid. One of ordinary skill in the art would know to power one or several heaters to accomplish the desired heating of heaters in series. The rearrangement of parts would be obvious to one of ordinary skill in the art because such rearrangement is within the skill level of one of ordinary skill to achieve various control over heating.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-36, 53-55 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Hayes at (703) 305-5873. The examiner can usually be reached Monday -Thursday, 7:00-4:30, and on alternate Fridays. If attempts to reach the

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examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi, can be contacted at (703) 308-2698. The fax number for submitting official papers is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mjh  
31 May 2005

A handwritten signature in black ink, appearing to read "M J Hayes", is positioned above the printed name.

**MICHAEL J. HAYES**  
**PRIMARY EXAMINER**